

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.31199 OF 2016

Sou. Anita Ashok Kolekar

..Petitioner

Versus

Election Returning Officer

Jaysingpur Municipal Council,

Jaysingpur, Tal-Shirol, Dist-Kolhapur

and others

..Respondents

Mr. S. R. Borulkar i/by Mr. M. A. Patil for the Petitioner.

Mr. G. M. Savagave for the Respondent Nos.1 & 2.

Mr. A. V. Anturkar, Senior Advocate a/w Mr. Uday Warujnikar for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 22nd NOVEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 08.11.2016 passed by the District Judge-1, Jaysingpur, by which order, the Election Appeal filed by the Petitioner against the order 02.11.2016 passed by the Returning Officer Jaysingpur Municipal Council rejecting the objection taken by the Petitioner to the acceptance of the nomination papers of the Respondent No.3, came to be dismissed.

2 The objection taken by the Petitioner was under Section 16(1)(ga) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 was inter-alia to the effect that the Respondent No.3 was holding an office of profit. It appears that the

Respondent No.3 was appointed as a Special Assistant Public Prosecutor under Section 25(3) of the Criminal Procedure Code for the Court of the Learned JMFC, Jaysingpur. In the instant case, the last date of the filling of the nominations was 29.10.2016. The Respondent No.3 herein had tendered her resignation not to the authority mentioned in the Law Officer's Rules but tendered the resignation to the District Collector and District Magistrate, Kolhapur through the Assistant Director and Public Prosecutor, Kolhapur. In response to the said resignation, the Additional Collector, Kolhapur vide letter dated 02.11.2016 had communicated to the Respondent No.3 acceptance of her resignation from the date of the resignation i.e. 27.10.2016. The Returning Officer had accordingly rejected the objection raised by the Petitioner to the nomination of the Respondent No.3. The said rejection of the objection was carried in Appeal by the Petitioner to the Court of the Learned District Judge-1, Jaysingpur and as indicated above, the Learned District Judge-1, Jaysingpur has by the impugned order dated 08.11.2016 dismissed the Appeal and thereby confirmed the order passed by the Returning Officer.

3 The Learned Counsel appearing on behalf of the Petitioner Mr. S. R. Borulkar would seek to reiterate the contentions raised by the Petitioner before the Returning Officer as well as the Appellate Court and would submit that on the date of the filling of the nomination the

Respondent No.3 was not qualified to be a candidate for the election to the Ward in question in the Jaysingpur Municipal Council. In support of the said contention, the Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court reported in 2008(1) Bom.C.R. 256 in the matter of Nayna Dnyanoba Pawar (Dr) Vs. Vimal Nandkishor Mundada (Dr) as also the judgment of the Apex Court reported in 2006 AIR (SC) 2119 in the matter of Jaya Bachchan Vs. Union of India and others.

4 It is required to be noted that the general elections to the Jaysingpur Municipal Council are slated on 27.11.2016. In terms of the well settled position in law as regards interdiction in election matters, no interference is called for with the impugned orders accepting the nomination of the Respondent No.3 and rejecting the Appeal filed by the Petitioner. The Writ Petition is accordingly dismissed.

5 However it would be open for the Petitioner to adopt such proceedings as are available in law if the occasion so arises after the elections are over. If any such proceedings are filed, needless to state that they would be tried on their own merits and in accordance with law.

[R.M.SAVANT, J]